

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Review of the Commission's Rules )  
Regarding the Main Studio and ) MM Docket No. 97-138  
Local Public Inspection Files of )  
Broadcast Television and Radio Stations )  
)  
47 C.F.R. §§ 73.1125, 73.3526 and 73.3527 )  
)

COMMENTS OF KHWY, INC.

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To the Commission		

**COMMENTS OF KHWY, INC.**

KHWY, Inc. ("KHWY"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits these Comments in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding. 1/ In the *Notice*, the Commission requested comments regarding its proposed relaxation of the main studio rule set forth in Section 73.1125 of its Rules and the local public inspection file requirements contained in Sections 73.3526 and 73.3527.

The Commission should rescind the former rule. The main studio rule is outmoded, unnecessary, and as recognized by the Notice, produces substantial inefficiencies. As KHWY knows from experience, radio operators do not need main

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1/ *Notice of Proposed Rule Making, In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, MM Docket No. 97-138 (released May 28, 1997) ("Notice").

studio requirements or other Commission directives on how best to learn and serve their listeners' needs. KHWY urges the Commission: (1) to eliminate or, in the alternative, replace the main studio rule with a rule that permits a broadcast station to maintain a toll-free number that connects listeners to the station and/or to establish an official representative in the station's community of license in lieu of a main studio; and (2) to ease all stations' public inspection file burdens through clearer requirements and better use of available technologies.

**I. A RADIO STATION DOES NOT REQUIRE MORE THAN A TOLL-FREE NUMBER WITHIN ITS SERVICE AREA OR AN OFFICIAL REPRESENTATIVE WITHIN ITS COMMUNITY OF LICENSE TO BE ACCESSIBLE TO ITS AUDIENCE.**

**A. The Main Studio Requirement Is Obsolete.**

**1. The Main Studio Rule Hampers the Fulfillment of the Statute It Was Intended to Serve.**

Section 307(b) of the Communications Act instructs the Commission to seek a "fair, efficient, and equitable distribution of radio service" nationwide. Although this provision is still thought the statutory basis underlying the main studio rule, 2/ the rule no longer furthers the goal of the statute.

In fact, the main studio requirement precludes the more efficient distribution of radio service. The maintenance of a local studio often creates significant expenses. Nonetheless, even in circumstances in which an individual main studio would not benefit a station or its listeners, the main studio

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2/ See Notice at ¶ 4.

requirement compels a station, whatever its economic context, to install and maintain another set of program origination and production facilities, as well as pay rent, utilities, and the salaries of at least two persons to staff the studio. The costs of the main studio in turn limits the ability of a station to sponsor new public services or to reach out to its community in more productive ways.

The current main studio rule also does not materially contribute to “fair” or “equitable” distribution of broadcast service. The requirement that every broadcast station maintain a staffed and equipped main studio within its principal community contour does not significantly add to the reasons why broadcast stations choose to present balanced programming that is of particular interest to the communities they serve. Radio stations, competing with a multitude of other media, must be responsive to their local listeners to ensure they remain loyal listeners. Moreover, the mere existence of a main studio in a particular community does not prompt community residents “to monitor a station’s public interest performance” or to encourage “a continuing dialogue between the station and the community.” 3/ In this increasingly electronic age, a strict main studio requirement does not even substantially facilitate such a dialogue.

## **2. The Main Studio Rule Is Not Necessary to the Commission’s Existing Regulatory Framework.**

Not only does the requirement conflict with its underlying statute, but the main studio rule no longer serves any real regulatory purpose. For the last

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3/ *Id.*

decade, the Commission has recognized the disappearing need for local studios. In a 1987 Report and Order, the Commission explicitly found that “the role of the main studio in the production of programming had diminished over the years [as] . . . community residents often communicate with stations by telephone or mail rather than visiting the studio.” 4/ The continued advance of technology, including the advent of the internet and electronic mail, as well as the increasing use of facsimiles, has only further reduced the diminished role described by the Commission in 1987. In addition, since the Commission eliminated the requirement that stations originate a set percentage of local programming, many stations have produced little or no programming at their so-called “main studios.” In light of these societal and regulatory developments, KHWY agrees with the number of broadcast entities that have recently challenged the main studio requirement as serving “no useful purpose,” since the main studios typically “are not used to originate programming and are rarely visited by the public.” 5/

### **3. KHWY Itself Demonstrates That Main Studio Requirements Are No Longer Relevant.**

The experience of KHWY’s radio stations confirms the uselessness of mandatory main studios in today’s broadcast context. KHWY, a radio station

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4/ Notice at ¶ 5 (citing *Report and Order, Amendment of Main Studio and Program Origination Rules for Radio and Television and Radio Broadcast Stations*, 2 FCC Rcd 3215, 3218-19 (1987) (“1987 Report and Order”).

5/ Notice at ¶ 7 (summarizing the petition for rule making filed by Apex Associates, Armak Broadcasters, Inc., Starview Media, Inc., Silverado Broadcasting Company, and Mountain View Broadcasting Company (the “Apex petition”).

operator in the Mojave Desert, owns three radio stations licensed to Yermo, Mountain Pass, and Essex, California, of which only one operates a main studio within its principal community contour. The other two stations have permanent waivers of the main studio rule and have each operated without main studios in their home communities for more than five years. Nonetheless, these stations have been able to keep aware of the interest, needs, and problems of their listeners. KHWY's Mountain Pass station, KHYZ(FM), has kept in touch with its listeners by making a toll-free number available to its licensed community and to other residents of the Mojave Desert region. The other studio-less station, KHWY(FM), Essex, California, has maintained an official "station representative" within that station's principal community contour in addition to the toll-free number. That representative not only maintains the public file, but also is available to answer questions about the station and to serve as a general ombudsman.

Although the Commission has previously stated that a main studio is necessary to "help expose stations to community activities," 6/ the years of successful service provided by KHWY's radio stations demonstrate that modern technologies make a local studio superfluous as a link between a station and the

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6/ See *Memorandum Opinion and Order, Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television and Television Broadcast Stations*, 3 FCC Rcd 5024 (1988) at ¶ 24.

communities it serves. 7/ For purposes of community interaction, the main studio is no more than an expensive redundancy.

In addition, the absence of a main studio does not make it unfeasible for studio-less stations to air locally originated programming. 8/ KHWY, for example, frequently conducts interviews and originates programming via telephone lines. In fact, KHWY's radio stations originate programming from many of the small communities across the Mojave Desert within the service areas of KHWY's radio stations on virtually a weekly basis. By using modern mobile equipment, KHWY is even more attuned to the communities it serves and better able to originate local programming than if it had a main studio in each of its licensed communities. In this regard as well, technological advances have made the main studio thoroughly obsolete.

**B. The Commission Should Eliminate or Replace the Outdated Main Studio Requirement.**

Ten years ago, the Commission relaxed the main studio rule because "developments in technology, the marketplace and [its] regulations" had eliminated

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7/ Although the main studio may also currently serve as the repository for a station's public file, such placement is hardly necessary under the Commission's rules. Currently, the Commission only requires the file to be kept at a reasonably accessible location in the station's community of license. Were the Commission to eliminate the main studio requirement, it could nonetheless maintain a requirement that the station's public file remain reasonably accessible to the public or in control of the station's official community representative, if the Commission determines such a requirement is necessary and appropriate.

8/ See Notice at n. 9.

the purpose of certain aspects of the rule. <sup>9/</sup> The Commission has since reaffirmed its commitment to the “longstanding Congressional and Commission policy in favor of reducing regulatory burdens consistent with the public interest.” <sup>10/</sup> In light of these established principles, the Commission should now eliminate the main studio rule in its entirety because there is no evidence that the rule continues to serve any aspect of the public interest, and there is certainly none sufficient to justify the expensive and extensive burdens the rule currently imposes on broadcast stations.

If the Commission is unwilling to endorse this logical reduction of every broadcast station’s regulatory burden at this time, it should at least attempt to make this burden as light as possible. The Commission should require only that a radio station provide a toll-free number to its service area through which listeners could contact the station with questions and comments. Alternatively, the Commission might require that a station maintain, instead of a main studio, an official station representative within its principal community contour. This representative would serve as the station’s local ombudsman and representative, much as KHWY’s representative has served for several years. This clear and uniform rule would permit rural stations throughout the United States to limit unnecessary expenses and so better effectuate the statutory goal of efficient and equitable distribution of broadcast service. It would thus efficiently replace the

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<sup>9/</sup> See *1987 Report and Order* at ¶ 46.

<sup>10/</sup> See *Notice* at ¶ 8.



current main studio regulation, which no longer promises benefits sufficient to justify the expensive inefficiencies that the requirement currently compels.

**C. If the Commission is Unwilling to Eliminate or Replace the Burdensome Main Studio Requirements, It Should At Least More Commonly Grant Permanent Waivers of Those Requirements to Rural Radio Service Providers.**

If the Commission refuses to end the expensive burden that the main studio requirement imposes on rural radio station operators, the Commission should at least provide more frequent relief through waivers. KHWY, along with other parties, has demonstrated that the main studio rule imposes unjustified costs on a broadcast station. In light of these costs, and the undeniably limited purpose of the main studio rule, the Commission should be willing to grant a waiver of whatever main studio requirement remains after this proceeding in any circumstance in which the main studio requirement would cause measurable hardship to the broadcast station. In addition, a station located in an area of low-density residential population or that has low annual revenues (or other similarly situated broadcast outlets) should qualify for at least a presumptive waiver. Otherwise, the costs of the now useless rule may significantly impair the efficient distribution of broadcast service nationally.

**II. THE COMMISSION SHOULD REDUCE THE BURDENS OF KEEPING A PUBLIC INSPECTION FILE BY LIMITING THE TYPES OF DOCUMENTS REQUIRED.**

The Commission should reduce the regulatory burden of an inspection file by no longer requiring retention of documents that bear little or no relevance to

a broadcast station's current operations. For instance, the Commission should eliminate any requirement that the current licensee reconstruct missing or incomplete public files maintained by previous owners of the station. Information that is related to prior ownership, such as previous ownership reports, programming and EEO practices, is irrelevant to the station's current operations and should not need to be maintained.

The Commission should also only require that a broadcast station maintain its public file at a location convenient to its community of license. A main studio or the location of the station's official representative, if either is maintained by the licensee, should qualify as a *per se* convenient location.

### III. CONCLUSION

For the foregoing reasons, KHWY favors elimination or, in the alternative, replacement of the main studio requirement with the proposed toll-free number and/or station representative rule as well as the reduction of the burdens associated with a station's public inspection file.

Respectfully submitted,

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